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December 16, 2008

Kim Collins
Attorney
Complaints Examination and
Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 22210

RE: MUR 6101

Dear Ms. Collins:

Heller for Congress ("the Committee") and its treasurer Chrissie Hastie received the complaint designated as MUR 6101 on November 4, 2008. The Committee was subsequently granted a 30 day extension of time in which to respond to this complaint. We appreciate your considering in this matter and hereby provide the following response.

The Committee believes that the complaint should be dismissed because the debts that are the subject of the complaint have not resulted in impermissible contributions to the Committee, and the debt is regularly reported by the Committee in accordance with Commission regulations. Further, the Committee is acting in good faith to pay its debts to these vendors and is taking steps to make payments when fundraising and cash flow permit.

No Impermissible Contribution has Resulted

No impermissible contribution has occurred. An extension of credit only results in an impermissible contribution only if (1) it is not made in the usual course of business for these creditors, (2) the creditor fails to make a commercially reasonable attempt to collect the debt, or (3) a debt is settled for less than the full amount owed, unless it is settled in accordance with the debt settlement provisions of the Commission's regulations. 11 C.F.R. § 100.55 and 11 C.F.R. § 116.3.

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It is the understanding of the Committee Treasurer that the committee was billed in accordance with the usual and normal billing practice for all of their vendors. Further, in the experience of the Treasurer, it is the practice of political consultants to bill their clients for services after they are rendered, once actual costs are known. In fact, this is the practice that was observed with respect to the debts that are the subject of this complaint. It is also not unusual for a candidate committee to take some time to address debt to vendors.¹

The complaint provides no evidence at all that November, Inc. or any of the other vendors have departed from their normal and usual business practices. In fact, November, Inc., Autumn Productions, and NI Operations have, to the extent of the Treasurer's knowledge, complied with their normal business practices with respect to the Committee. The Treasurer has worked with these entities on the Committee and with other clients, and it is her understanding that the normal business practice is to bill after services are rendered and to await payment.

With respect to Foundation, Inc.,² the Treasurer has treated the Committee as she has all of her other clients. The Committee is paying its current invoices, and is making payments towards those past due invoices. As part of the normal and usual business practice of Foundation, Inc., the company allows clients to address debt in this manner. Accordingly, the committee believes that the billing practices observed by the committee's vendors were in the usual course of business for the types of services offered and that no contribution has resulted.

The Debts Reported on Schedule D Do Not Qualify as an Extension of Credit

The complaint asserts, without any shred of evidence, that the debt reported on Schedule D of the Committee's reports represent extensions of credit under 11 C.F.R. § 116.1(e). An extension of credit is defined by Commission regulations as "(1) Any agreement between the creditor and political committee that full payment is not due until after the creditor provides good or services to the political committee; (2) Any agreement between the creditor and the political committee that the political committee will have additional time beyond the previous agreed due date; and (3) The failure of the political committee to make full payment to the creditor by a previously agreed to due date." 11 C.F.R. § 116.1(e).

The debts reported by the committee on Schedule D do not qualify as an extension of credit under this definition. The debts owed to the committee's creditors are not the result of any agreement between the committee and their creditors with respect to the payment of invoices.

¹ See, e.g. Hillary Clinton for President's October monthly report showing more than \$9,000,000 in debt from the 2008 primary season; See also Friends of John Glenn, Year End 2005 report disclosing more than \$2,600,000 in debt stemming from the 1984 presidential campaign.

² Foundation, Inc. is a business owned and operated by the Committee's treasurer. Foundation, Inc. provided services to the committee during the 2006 election cycle and continued to provide services during the 2008 election cycle under the name InCompliance, Inc.

The Committee Reports the Debt and Makes Payments

The committee has continued to report the debts owed to November, Inc., Autumn Productions, NI Operations and Foundation, Inc. in accordance with Commission regulations. In fact, it was the proper reporting of its debts that gave rise to this complaint. The committee has not made any attempt to settle the debts for less than owed, and will continue to report them as debts until fully repaid by the committee or discharged in accordance with 11 C.F.R §§ 116.3 and 116.4.

During the 2006 election cycle, November, Inc., Autumn Productions, and NI Operations provided services to the Committee.³ Foundation, Inc, operating under its new name InCompliance, Inc., continued to provide services to the Committee during the 2008 election cycle. With respect to these entities, the Committee has paid \$8,400 towards the total debt owed to November, Inc. and the entire \$600 owed to NI Operations since the close of books for the pre-general report. Foundation, Inc.'s current invoices were paid as they were received, and the Committee continues to reflect the debt owed on its regular reports. The total balance owed to Foundation, Inc., November, Inc. and Autumn Productions is reflected on Schedule D of the post-general report the committee filed on December 4, 2008.

The Committee, like most candidate committees, needs to take steps to address its cash management and has done so during the course of the 2008 election cycle. As funds are received that would otherwise exceed donation limits, the Committee is seeking re-designation of those contributions to debt retirement in accordance with 11 CFR § 110.1(b)(5). In addition, the Committee has made and is continuing to make an effort to seek debt retirement contributions from both individuals and PACs.

Conclusion

As a result of the above information, the Committee does not believe that any impermissible extension of credit occurred under 11 C.F.R. §§ 116.1(e), 116.3 and 100.55. The Committee intends to continue to pay its debt to these vendors as cash flow and fundraising permit, and the Committee has so far demonstrated a good faith effort to do so.

Based on the foregoing explanation, the Committee's payment history, ongoing effort to pay the debt, and the lack of any showing that an impermissible extension of credit occurred, Heller for Congress and its treasurer Chrissie Hastie respectfully request that the Commission dismiss the complaint and take no further action in this matter.

³ The relationship among these three entities, if any, was alleged in the complaint, but is not relevant for the purposes of Federal Election Commission regulations.

Thank you very much for your attention in this matter and please do not hesitate to contact me at 540-341-8808 (telephone) or 540-341-8809 (fax) with questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Torchinsky", with a long horizontal stroke extending to the right.

Jason Torchinsky
Counsel to Heller for Congress